

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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| STATE OF WASHINGTON, |) | |
| |) | No. 61733-8-I |
| Respondent, |) | |
| |) | DIVISION ONE |
| v. |) | |
| |) | UNPUBLISHED OPINION |
| MARCUS OWEN SMITH, |) | |
| |) | |
| Appellant. |) | FILED: August 3, 2009 |
| |) | |

Appelwick, J. — Marcus Smith contends there was insufficient evidence to support his conviction for first degree robbery. A person may be found guilty of first degree robbery when, in the course of committing the robbery, he displays what appears to be a firearm. RCW 9A.56.200(1)(a)(ii). Because a rational trier of fact could have found beyond a reasonable doubt that Smith displayed what appeared to be a firearm, we affirm Smith's conviction.

FACTS

On May 4, 2007, at approximately 5:00 p.m., Marcus Smith pulled up to the order window of the Moolicious Espresso stand in Tukwila. Smith ordered a coffee, and Christina Peterson, the barista, began to make his order. When she handed him the coffee, Smith began to tell Peterson that he was going through a

hard time. She then looked down and saw a gun in his lap. Peterson did not recall whether Smith told her he had a gun, but she saw it clearly. Smith did not explicitly ask Peterson for money. She backed away from the window, asking Smith not to hurt her. Peterson gave Smith approximately \$400 to \$500 dollars. Smith then drove away. Several days later, police placed Smith under arrest for armed robbery.

The State charged Smith with two counts of robbery in the first degree, one pertaining to the incident at Moolicious Espresso, and two counts of robbery in the second degree. When Smith testified at trial, he admitted that he robbed Peterson and employees of other espresso stands, but denied that he used or displayed a gun during those robberies.

A jury found Smith guilty of all counts.¹ The court sentenced Smith to 144 months, a standard range sentence. Smith timely appealed.

DISCUSSION

I. Sufficiency of the Evidence

Smith contends that the State failed to establish an element of first degree robbery, specifically, that he displayed what appeared to be a firearm.

Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). We must draw all reasonable

¹ Smith only assigns error to the jury's guilty verdict on Count III, pertaining to the robbery of Peterson.

inferences from the evidence in favor of the State and interpret them most strongly against the defendant. Id. By claiming insufficiency, the defendant admits the truth of the State's evidence and all reasonable inferences therefrom. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In evaluating the sufficiency of the evidence, circumstantial evidence is as probative as direct evidence. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

The State must prove beyond a reasonable doubt that Smith, in the commission of a robbery, displayed what appeared to be a firearm or other deadly weapon. RCW 9A.56.200(1)(a)(ii); State v. Kennard, 101 Wn. App. 533, 539, 6 P.3d 38 (2000). The State is not required to prove that the defendant brandished the weapon or that the victim saw the weapon. Kennard, 101 Wn. App. at 539. A conviction will be sustained if the evidence "is sufficient to show that the accused indicated, verbally or otherwise, the presence of a weapon because the effect on the victim is the same regardless of whether the victim actually sees the weapon." Id.

Peterson testified that as she returned to give Smith his drink, she looked down and saw a gun in his lap. Although Smith neither asked her for money nor stated he had a gun, Peterson was fearful. She asked Smith not to hurt her. Smith testified that he had purchased a toy gun and had altered it to make it look like a real gun. Viewing this evidence in the light most favorable to the State, which we must, leaves but one conclusion: that Smith displayed what appeared to be a firearm, the presence of which was observed by Peterson.

Although Smith denied using or displaying the gun while he robbed Peterson, the jury was entitled to make a credibility determination to resolve the conflicting testimony of Smith and Peterson. The jury's credibility determination was in favor of Peterson. We will not disturb credibility determinations on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

The evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that Smith displayed what appeared to be a weapon.

II. Statement of Additional Grounds

In his statement of additional grounds, Smith argues that his convictions should be overturned on the basis of a defective information, an instructional error, and cumulative error.

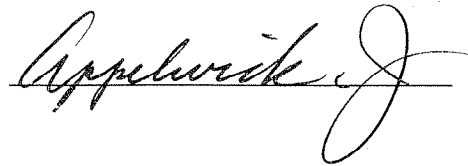
Smith contends that the information was defective. A charging document is constitutionally adequate only if it states the essential elements of the crime, statutory and nonstatutory, such that it appries the defendant of charges against him and allows him to prepare his defense. State v. Leach, 113 Wn.2d 679, 686, 782 P.2d 552 (1989). It must also allege facts supporting every element of the offense. Id. at 689. On each of the four counts, the information stated all the elements of both first and second degree robbery and alleged sufficient facts.

Smith also contends that the inclusion of jury instruction 8, which defined "firearm," was erroneous, as the robbery only involved a toy gun. Instructions are sufficient if, when considered as whole, they are readily understood, are not

misleading to the ordinary mind, and properly inform the trier of fact of applicable law. State v. Rehak, 67 Wn. App. 157, 165, 834 P.2d 651 (1992). Instruction 7 stated the elements of first degree robbery, which included displaying “what appears to be a firearm.” In order for the jury to properly consider whether Smith displayed what appeared to be a firearm, the court also had to give the jury a definition of “firearm.” Instruction 8, defining a firearm, was therefore not erroneous.

Finally, Smith contends that cumulative error deprived him of a fair trial. The cumulative error doctrine mandates reversal when the cumulative effect of nonreversible errors materially affects the outcome of trial. State v. Russell, 125 Wn.2d 24, 93, 882 P.2d 747 (1994). Because we find no error, the doctrine is not applicable here.

We affirm.

A handwritten signature in cursive script, reading "Appelwick J.", written over a horizontal line.

WE CONCUR:

Schindler, CT Becker, J.